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OF COUNSEL

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re Case No. BK-S-18-12456-GS
DESERT OASIS APARTMENTS, LLC, Chapter 11
Debtor.

Hearing Date: March 11, 2021
Hearing Time: 1:30 p.m.

**BUSBIN'S REPLY TO NORTHERN TRUST'S OBJECTION TO DISCLOSURE
STATEMENT AND PLAN**

In *The Northern Trust Company's Objection to Disclosure Statement for Chapter 11 Trustee Kavita Gupta's Joint Plan of Liquidation and Confirmation of the Joint Plan of Liquidation* [ECF No. 266] ("Objection"), The Northern Trust Company ("Northern Trust") objects to the proposed plan on the alleged ground that the reserve for attorneys fees and costs of Northern Trust should be increased from \$75,000 to \$500,000. Creditor Brad Busbin, Trustee of the Gonzales Charitable Remainder Unitrust One ("Busbin")

1 requests that the Court overrule this objection because a reserve of \$75,000 is reasonable
2 and a reserve of \$500,000 is unreasonable.

3
4 Mr. Busbin also joins in the *Objection to The Northern Trust Company's Motion*
5 *to Allow Vote on Chapter 11 Trustee Kavita Gupta's Joint Plan of Liquidation* [ECF No.
6 282] and the *Memorandum of Points and Authorities in Support of Confirmation Chapter*
7 *11 Trustee Kavita Gupta's Joint Plan of Liquidation, and Omnibus Response to*
8 *Objections to Plan Confirmation* [ECF No. 129] filed March 4, 2021 by Trustee Kavita
9 Gupta, Desert Oasis Apartments, LLC Trustee.

10
11 The sole matter that Mr. Busbin is addressing in this reply is the amount that
12 should be reserved for Northern Trust's attorneys fees and costs.

13
14 There is no law cited in Northern Trust's Objection as to setting the amount of the
15 reserve. The amount of the reserve therefore is within the Court's discretion based on the
16 surrounding circumstances. *United States v. Energy Res. Co.*, 495 U.S. 545, 549, 110 S.
17 Ct. 2139, 2142 (1990) (bankruptcy courts, as courts of equity, have broad authority to
18 modify creditor-debtor relationships).

19
20 At this time, the Desert Oasis Apartments have been sold and Northern Trust has
21 received payment in full of its asserted debt, including interest, late charges, attorneys
22 fees and miscellaneous charges. Since Northern Trust's claim has been allowed and paid,
23 with interest and all the extras, the only remaining stake that Northern Trust has in this
24 bankruptcy case is recovering additional attorneys fees and costs for filing additional
25 papers with this Court and with the appellate courts.
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1 After payment of the claim of Northern Trust, the current balance in the account of
2 Chapter 11 Trustee Gupta is \$9.2 million, according to the Trustee's filings with the
3 Court for the March 11, 2021 hearing.
4

5 In its *Order Directing Trustee to Disburse Proceeds to Northern Trust Company*
6 entered August 28, 2020, the Court directed that the amount of the reserve to be
7 established for Northern Trust's attorneys fees and costs was to be set by subsequent
8 court order. In the proposed Chapter 11 plan, Trustee Kavita Gupta has proposed a
9 reserve of \$75,000.
10

11 Northern Trust's Objection states: "Currently, Northern Trust's unpaid fees July
12 20 and August 2020 (which is before the closing of the sale of the property owned by
13 Apartments) total approximately \$100,000." *Objection, 3:16-18*. Northern Trust argues
14 that a \$75,000 reserve therefore is inadequate.
15

16 Mr. Busbin is at a loss to comprehend how the alleged attorneys fees for July and
17 August reached the \$100,000 plateau. In those two months, Northern Trust and the
18 Shotgun Entities responded to two motions in the adversary proceeding of Busbin v.
19 Shotgun Creek Investments, LLC, et al., Adv. No. 19-01108-gs, and filed no motions in
20 either the adversary or the main case.
21

22 Yet despite what appears to be fairly limited activity, Northern Trust allegedly
23 incurred \$100,000 in fees and costs in those two months. Mr. Busbin cannot ascertain
24 what services allegedly were rendered to reach this figure, because Northern Trust will
25 not allow Mr. Busbin to see its billings, even in redacted form. Mr. Busbin has asked the
26 Court in the past to allow him to inspect the attorneys fees invoices for the lawyers
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1 providing services to Northern Trust in this bankruptcy case and the adversary case, in
2 the belief that it is only fair and equitable that a creditor seeking fees to be paid by an
3 estate should provide the interested parties whose recoveries will be lessened by payment
4 of another's creditors' attorneys fees with the raw data upon which the fees are based; i.e.,
5 itemized invoices. This Court previously granted Mr. Busbin's request and ordered that
6 redacted invoices be produced.
7

8
9 Just as a matter of fairness and common sense, Northern Trust should again
10 disclose the new invoices from its lawyers, if it wishes to have the Court consider the
11 claim made in its Objection that it incurred \$100,000 in fees in July and August of 2020.
12 Otherwise, the claim that \$100,000 in fees were incurred is unsupported by any evidence
13 and it is impossible for Mr. Busbin and other interested parties to ascertain the basis for
14 the fee demand.
15

16
17 Even without having seen the invoices of the lawyers representing Northern Trust
18 for the months of July and August, 2020, Mr. Busbin knows that the lead attorney for
19 Northern Trust in the adversary proceeding is the firm of Gerrard Cox Larson. However,
20 Gerrard Cox Larson also represents the Shotgun Entities. It would be inequitable for the
21 estate of Desert Oasis Apartments to be "billed" the entire invoices of Gerrard Cox
22 Larson for the adversary appeal, when that firm is representing the Shotgun Entities as
23 much as Northern Trust. Thus, if Gerrard Cox Larson incurred \$25,000 in fees, for
24 example, it is unreasonable for Northern Trust to demand that all of the firms fees be paid
25 by Desert Oasis Apartments' bankruptcy estate. Presumably, the billing from the Gerrard
26 Cox Larson firm is split between its clients, so that the entire invoice is not billed to
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1 Northern Trust, but without seeing the invoices, Mr. Busbin cannot ascertain the true
2 circumstances and what amounts are being billed, for what services, to whom.

3
4 As to the reserve of \$75,000 that Trustee Gupta proposes, Northern Trust and the
5 Shotgun Entities are defending an appeal. Again, if Northern Trust and the Shotgun
6 Entities are splitting the appeal costs, as they should be, this means that Northern Trust's
7 half of the attorneys fees and costs on appeal would be \$75,000 or less, and the total fees
8 would be \$150,000 or less.

9
10 The status of the appeal is that it has been fully briefed to the Hon. James Mahan,
11 District Judge. If Judge Mahan reverses this Court's summary judgment order on Count
12 I, he may either remand the case for trial or decide priority based on the facts presented.
13 Either way, if the ruling is a reversal, Northern Trust is not entitled to claim priority, it is
14 not entitled to retain any of the proceeds of the sale of the apartments, and it may likely
15 be that Northern Trust falls into the category of an undersecured creditor.

16
17 In *Matter of Glenn*, 796 F.2d 1144, 1146 (9th Cir. 1986), the court stated: "[A]n
18 undersecured creditor is one who holds an allowed secured claim for an amount which
19 exceeds the value of the property securing it; an oversecured creditor is one who holds an
20 allowed secured claim in an amount less than the value of the property securing it." As
21 an undersecured creditor, under 11 U.S.C. §506(b), Northern Trust also would not be
22 entitled to attorneys fees and post-petition interest. If the appeals were to remand for
23 trial, Northern Trust would need to disgorge the sums it has already received and there
24 would be no reserve necessary. The amount of the "reserve" should take the possibility
25 these matters into account.

1 Even as an alleged oversecured creditor, however, Northern Trust's fees must be
2 reasonable. In *Kord Enters. II v. Cal. Commerce Bank (In re Kord Enters. II)*, 139 F.3d
3 684, 687 (9th Cir. 1998), the court set forth four basic requirements for the allowance of
4 post-petition attorney's fees and expenses to a secured creditor: (1) the claim must be an
5 allowed secured claim; (2) the creditor holding the allowed secured claim must be over-
6 secured; (3) the entitlement must be provided for under some agreement or state statute;
7 and (4) the fees and expenses sought must be reasonable. As the applicant for fees,
8 Northern Trust bears the burden of proving each element. *Id.*

11 Essentially, Northern Trust is liable for part (not the whole amount) of fees
12 incurred by Gerrard Cox Larson for the appeal in the adversary proceeding. If the district
13 court decision were to go against Mr. Busbin on appeal, and if Mr. Busbin were to appeal
14 to the Ninth Circuit, Northern Trust and the Shotgun Entities would have a shared
15 obligation to pay the cost of filing a second appellate brief, presumably tracking the same
16 factual presentation and argument that was filed before Judge Mahan, which tracks the
17 same factual presentation and argument that was filed before this Court. Thus, any
18 subsequent appellate brief to the Ninth Circuit would be the third time that essentially the
19 same brief is filed. Even if Gerrard Cox Larson spends 100 hours re-doing its brief again,
20 which is not even remotely likely under the circumstances, and even if Gerrard Cox
21 Larson were to charge \$750 an hour for attorney's time, which also is not likely, it would
22 only amount to \$75,000 total time, and that sum must be split between Northern Trust
23 and the Shotgun Entities.
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1 It is therefore reasonable under the circumstances for Trustee Gupta to set aside
2 \$75,000 as Northern Trust's portion of fees that may be incurred by Gerrard Cox Larson.
3
4 The figure of \$500,000 is simply beyond the pale, and it is completely unsupported.

5 It is therefore respectfully request that the Objection to the reserve of \$75,000 be
6 overruled and that the Court grant all other appropriate relief.
7

8
9 DATED: March 4, 2021

LAW OFFICES OF MARK WRAY

10
11 By /s/ Mark Wray
12 MARK WRAY

13 Attorney for Creditor
14 BRADLEY J. BUSBIN, AS TRUSTEE
15 OF THE GONZALES CHARITABLE
16 REMAINDER UNITRUST ONE
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CERTIFICATE OF SERVICE

1. I caused to be served the following document(s):

BUSBIN'S REPLY TO NORTHERN TRUST'S OBJECTION TO
DISCLOSURE STATEMENT AND PLAN

2. I served the above-named document(s) by the following means to the persons
as listed below:

▪ a. **By ECF System (On March 4, 2021):**

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SOLELY IN HER CAPACITY AS TRUSTEE OF THE CRISTI BULLOCH
SEPARATE PROPERTY TRUST DATED 03/28/2003; on behalf of Interested
Party DESERT LAND LOAN ACQUISITION, LLC; on behalf of Interested Party
THE BULLOCH HERITAGE TRUST; on behalf of Interested Party THE GULF
STREAM IRREVOCABLE TRUST DATED 06/30/2000; on behalf of Interested
Party THE HOWARD AND CRISTI BULLOCH FAMILY TRUST DATED
9/14/1995; on behalf of Interested Party THE HOWARD BULLOCH SEPARATE
PROPERTY TRUST DATED 03/28/2003; on behalf of Interested Party DAVID
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SOLELY IN HER CAPACITY AS TRUSTEE OF THE CRISTI BULLOCH

1 SEPARATE PROPERTY TRUST DATED 03/28/2003; on behalf of Interested
2 Party DESERT LAND LOAN ACQUISITION, LLC; on behalf of Interested Party
3 THE BULLOCH HERITAGE TRUST; on behalf of Interested Party THE GULF
4 STREAM IRREVOCABLE TRUST DATED 06/30/2000; on behalf of Interested
5 Party THE HOWARD AND CRISTI BULLOCH FAMILY TRUST DATED
6 9/14/1995; on behalf of Interested Party THE HOWARD BULLOCH SEPARATE
7 PROPERTY TRUST DATED 03/28/2003; on behalf of Interested Party DAVID
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15 DESERT OASIS APARTMENTS, LLC, DESERT OASIS INVESTMENTS, LLC
16 and SKYVUE LAS VEGAS, LLC
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21 mweisenmiller@gtg.legal, bknotices@gtg.legal

22 ☐ b. **By United States mail, postage fully prepaid:**

23 ☐ c. **By Personal Service**

24 ☐ I personally delivered the document(s) to the persons at these addresses:

25 ☐ For a party represented by an attorney, delivery was made by handing the
26 document(s) to the attorney or by leaving the document(s) at the attorney's office with a
27 clerk or other person in charge, or if no one is in charge by leaving the document(s) in a
28 conspicuous place in the office.

1 ☐ For a party, delivery was made by handing the document(s) to the party or
2 by leaving the document(s) at the person's dwelling house or usual place of abode with
3 someone of suitable age and discretion residing there.

4 ☐ d. **By direct email (as opposed to through the ECF System)**

5 Based upon the written agreement to accept service by email or a court
6 order, I caused the document(s) to be sent to the persons at the email addresses listed
7 below. I did not receive, within a reasonable time after the transmission, any electronic
8 message or other indication that the transmission was unsuccessful.

9 ☐ e. **By fax transmission**

10 Based upon the written agreement of the parties to accept service by fax
11 transmission or a court order, I faxed the document(s) to the persons at the fax numbers
12 listed below. No error was reported by the fax machine that I used. A copy of the record
13 of the fax transmission is attached.

14 ☐ f. **By messenger**

15 I served the document(s) by placing them in an envelope or package
16 addressed to the persons at the addresses listed below and providing them to a messenger
17 for service.

18 **I declare under penalty of perjury that the foregoing is true and correct.**

19 Signed on: March 4, 2021

20
21 Mark Wray
22 (Name of Declarant)

21 /s/ Mark Wray
22 (Signature of Declarant)